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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of decision: 19.09.2024

MITHUN MAHAJAN

... PETITIONER

V/s

PARUL MAHAJAN

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Rose Gupta, Advocate and
Ms. Garima Modi, Advocate for the petitioner.

Mr. Deepak Sabherwal, Advocate and
Mr. Jasdeep Singh Salooja, Advocate for the respondent.

SUMEET GOEL, J.

1. Challenge in the present petition is made to the order dated 21.12.2019 passed by Principal Judge, Family Court at Gurdaspur, in Case bearing CIS No.MNT 266/2019, Case No.08 of 27.02.2017. Vide the impugned order the Family Court allowed the petition under Section 125 of the Code of Criminal Procedure, filed by the respondent.

2. In order to ward off any ambiguity qua the status of parties in the proceedings, the parties are being addressed by status of the petitioner and respondent, respectively, in the present criminal revision petition.

3. The marriage of petitioner was performed with the respondent on 06.02.2013. The parties are stated to have lived and co-habited together at Pathankot and Delhi after their marriage. However, no issue was born out of the wedlock of the parties. Differences having arisen between the parties, the respondent (wife) filed a petition under

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Section 125 of the Code of Criminal Procedure for grant of maintenance against the petitioner (husband).

4. The Family Court while deciding the maintenance petition held that the respondent though is well qualified having studied B.Tech., but is not doing any work. It finds mention in the impugned order that the respondent left her job so as to give time to the petitioner and to perform her matrimonial obligations. The petitioner is also a B.Tech. Engineer, and is working as a software engineer in a reputed company at Delhi. Relying upon the Income Tax Return of the petitioner (husband) the Family Court held that his annual income is Rs.27 lacs, monthly income being Rs.2,25,000/- approximately. Accordingly, the Family Court granted an amount of Rs.70,000/- as maintenance to the respondent. The same is challenged in the present criminal revision petition by the petitioner.

5. It is pertinent that while issuing notice of motion in the present criminal revision petition this Court vide order dated 14.02.2020 directed the petitioner to continue to make the payment of maintenance @ Rs.45,000/- per month and on his doing so, the payment of balance amount of maintenance under the impugned order was stayed.

6. On account of non-payment of the arrears of maintenance by the petitioner, the Family Court, subsequently vide order dated 09.11.2020 directed the employer of the petitioner to deduct the half Salary of the petitioner and to send the same to the Family Court. Further, conditional warrant of arrest of the petitioner for payment of

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amount of Rs.15,00,000/- towards maintenance was issued by the Family Court.

7. The petitioner is stated to have challenged the order dated 09.11.2020 before this Court by filing case bearing No. CRM-M 361 of 2021. The petitioner is stated to have made certain payment of partial amount of maintenance during the pendency of said petition before this Court. Be that as it may, the fact remains that the petitioner had not complied with the direction of this Court in the present proceedings vide order dated 14.02.2020. The case bearing CRM-M 361 of 2021 filed by the petitioner before this Court was ultimately dismissed as withdrawn by the petitioner on 21.12.2021.

8. It is argued on behalf of the petitioner that the impugned order dated 21.12.2019 is not sustainable, as the Family court has not considered the defence of the petitioner as stated in his reply to the petition under Section 125 Cr.P.C., as well as in the cross-examination of the respondent. It is argued that the respondent is not entitled to seek maintenance as she has willfully deserted the company of the petitioner without any reasonable cause. It is further argued that the Family Court has erred in holding the annual income of the petitioner as Rs.27.00 lacs per annum. Whereas, the petitioner's income after payment of tax was Rs.25,52,220/- per annum. It is further submitted that the petitioner was paying rent of Rs.32,000/- per month and Rs.25,000/- per month to his aged mother and these amounts were to be set off from the income of the petitioner while assessing the quantum of maintenance. It is submitted that after deducting these amounts the net payable income of

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the petitioner comes to Rs.18,68,220/- i.e. Rs.1,55,650/- per month. With these submissions the petitioner prayed for setting aside of the impugned order.

9. While rebutting the arguments on behalf of the petitioner the learned counsel for the respondent submitted that the conduct of the petitioner in not paying the maintenance amount to the respondent (wife), despite the order of the Family Court, as well as this Court at the time of issuing notice of motion, vide order dated 14.02.2020 being contumacious, the petitioner is not entitled to any relief. It is submitted that the petitioner is unnecessarily harassing the respondent by entangling her in multifarious litigations. It is submitted that the impugned order passed by the Family Court based on due appreciation of facts and sound reasoning is entitled to be maintained. With these submissions the dismissal of the present criminal revision petition is prayed for.

10. I have heard the learned counsel for both the parties and have gone through the record of the case carefully.

11. Perusal of the Family Court record shows that the respondent in her petition under Section 125 Cr.P.C., averred that prior to her marriage she was working in some College, but right from the day of her marriage, she left the job at instance of the petitioner, to perform her matrimonial obligations. But the relations between the parties got strained after the marriage and the respondent was asked to leave her matrimonial home on 27.01.2014, on the pretext that petitioner will bring her back after some days, while visiting her parental home.

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But the petitioner never visited to bring her back, despite her requests in that regard. Ultimately, in the 1st week of May, 2014 the respondent with her father visited the petitioner, but the petitioner flatly refused to keep her with him without any reasons. Then the respondent with her father went back to Dinanagar on 04.05.2014. The relatives of the respondent tried to reason out the issue with the family members and relatives of the petitioner, but to no avail. On 15.06.2014 petitioner visited Novelty Mall at Mamoon (Pathankot) at 8.00 AM. The respondent feeling happy on this development went to see the petitioner at Novelty Mall all alone and stayed there with him till evening. The petitioner assured her that he will come back soon to fetch her but he failed to keep his promise. On 13.07.2014 a meeting of respectable was convened thereafter, to sort out the issue, but the petitioner did not take the respondent back in his company. As such the respondent was constrained to file the petition for grant of maintenance against the petitioner.

12. In his reply to petition under Section 125 Cr.P.C. the petitioner stated that the respondent, soon after their marriage, started fighting with the petitioner on frivolous matters. It is stated that she attempted to commit suicide in the month of April, 2013 and also used to threaten to involve the petitioner and his family members in false case of dowry. It is stated that it is the respondent who willfully left the company of the petitioner in January, 2014. The petitioner tried to persuade the respondent to live a peaceful matrimonial life but she abused him & threatened to implicate him in false case.

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13. Perusal of the deposition of respondent as AW-2 in the maintenance proceedings shows that she fully supported her averments in the petition under section 125 Cr.P.C. In her cross-examination except putting her plain and bald suggestions, which she denied, nothing else was put to her. It is pertinent to mention that the petitioner chose not to lead any evidence and did not enter the witness box. Despite grant of ample opportunities, no oral or documentary evidence was led by the petitioner in the maintenance proceedings. His opportunity to lead evidence was closed by the Family Court, vide order dated 19.12.2019 by passing the following order:

“No respondent evidence is present. However, counsel for the respondent has stated at bar that he had called the respondent and he refused to brought evidence today in the Court. Accordingly, the evidence of respondent is ordered to be closed by order.”

14. The order dated 19.12.2019, passed by the Family Court is not shown to have been challenged by him and as such the same has attained finality. In view of this, the choice exercised by the respondent not to enter the witness box and not to lead any evidence shows that the averments in his reply to the petition under Section 125 Cr.P.C. remained unproved. As such, no weightage can be attached to the same. The averments of the respondent in petition under Section 125 Cr.P.C. qua the act of petitioner neglecting her, have totally gone un rebutted. In view of these facts, the arguments advanced by the counsel for the petitioner regarding non-reading of the pleadings and cross-examination of the respondent is wholly misconceived and is liable to be rejected.

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15. Now, coming to the next argument, advanced on behalf of the petitioner, qua the wrong assessment of income of the petitioner by the Family Court while assessing the quantum of the maintenance to the respondent. Perusal of exhibit A-5, i.e. Income Tax Return of the petitioner for the Assessment Year 2017-18, shows that he has disclosed his annual Gross Total Income of Rs.27,21,976/- and Taxable Total Income of Rs.25,52,220/- for the said financial year. The arguments raised in the present Criminal Revision Petition that the Family Court overlooked the liability of the Petitioner to pay rent of Rs.32,000/- per month and Rs.25,000/- to her aged mother, are liable to be rejected, being beyond his pleadings. The Petitioner in his reply to the petition under Section 125 Cr.P.C. has not uttered even an iota, regarding his Income and more particularly these alleged expenses to be incurred by him. He has not entered witness box to depose these facts to be tested on the touchstone of cross-examination. The filing of a copy of alleged Lease Agreement dated 24.05.2018, as Annexure P-3, with this Criminal Revision Petition, by the petitioner, to contend that he is paying rent of Rs.32,000/- per month, is not sustainable in law. The Lease Deed Annexure P-3 filed by the petitioner cannot be relied upon or taken into consideration for the simple reason that the same does not form part of the record of the case before the Family Court. The said document is beyond the scope of pleadings of the petitioner in his reply to the petition filed by respondent under Section 125 of Cr.P.C. before the Family Court. The said document dated 24.05.2018 was in the possession and knowledge of the petitioner on 19.12.2019 i.e. when his

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evidence was closed by the Family Court. He had the opportunity to introduce the said document in evidence but he deliberately refrained from doing the same. The order dated 19.12.2019, having attained the finality, without there being any challenge to the same by the petitioner, cannot be undone by this Court in the present criminal revision proceedings, to appreciate the case of petitioner which is neither pleaded nor proved by him at the appropriate stage. The averment on behalf of the petitioner regarding alleged payment of Rs.25,000/- to his mother, being bald averment without any substance cannot be relied upon. Accordingly, the arguments on behalf of the petitioner on this aspect are also rejected.

16. The argument relating to the petitioner having lost his job due to the recovery proceedings initiated by the respondent qua the maintenance fixed by the Family Court, as the Family Court had ordered the employer of the petitioner to deduct his salary and deposit the same with the Family Court, is also a flawed one. The loss of job as portrayed by the petitioner due to alleged reason of recovery proceedings against him, cannot be considered as a mitigating circumstance to free him of his obligation to maintain the respondent in compliance of the impugned order passed by the Family Court. The reason for alleged loss of job by the petitioner is not substantiated from any reliable material on the record of the case. Moreover, the alleged loss sustained by the petitioner arising out of his own wrong, the petitioner cannot be held entitled to gain any benefit out of the same.

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17. It is argued on behalf of the petitioner that the respondent is well qualified, having studied B.Tech. and as such is able to maintain herself. She was admittedly working prior to her marriage with the petitioner. So far as the argument regarding the capacity of the wife to earn, raised on behalf of the petitioner is concerned, the Hon'ble Supreme Court of India, while dealing with the said aspect in case of ***Shailja vs. Khobbanna, 2017(2) RCR (Criminal) 497***, held as under:

“That apart, we find that the High Court has proceeded on the basis that the appellant No.1 was capable of earning and that is one of the reasons for reducing the maintenance granted to her by the Family Court. Whether the appellant No.1 is capable of earning or whether she is actually earning are two different requirements. Merely because the appellant No.1 is capable of earning is not, in our opinion, sufficient reason to reduce the maintenance awarded by the Family Court.”

17.1 Hon'ble Bombay High Court, in the case ***of Mr. Sanjay Damodar Kale vs Ms. Kalyani Sanjay Kale, 2020(3) RCR (Criminal) 27*** held as under:

*“However, the fact that the wife carries on some business and earns some money is not the end of the matter. Neither the mere potential to earn nor the actual earning, howsoever meager it may be, is sufficient to deny the claim of maintenance. The learned Judge, Family Court was justified in placing reliance on the judgment of the Supreme Court in the case ***of Sunita Kachwa v. Anil Kachwa, III 2014 (DMC) 878 S.C.***, wherein it was*

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observed that, 'the learned counsel for the respondent submitted that the appellant-wife is well qualified, having post graduate degree in Geography and working as a teacher in Jabalpur and also working in Health Department. Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. In so far as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.'

17.2 In view of the above law laid down by the Hon'ble Supreme Court as well as the Hon'ble Bombay High Court, it is well settled that the right of the respondent to claim maintenance from the petitioner cannot be rejected on the mere ground that she is professionally qualified. This fact assumes all the more significance in view of the pleadings of the respondent in her petition under Section 125 Cr.P.C. that she left her job on the very day of her marriage at the instance of the petitioner, so that she may give proper time to the petitioner and to perform all her matrimonial obligations. The petitioner, by making the respondent to sacrifice her professional avenues by giving up her job way back in the year 2013, after passage

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of more than 9 years, cannot be now permitted to take the plea that the respondent is professionally qualified to earn her living.

18. In view of the above findings the present criminal revision petition lacks merit and is accordingly, dismissed.

(SUMEET GOEL)
JUDGE

September 19, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No